

COMMITTEE ON THE JUDICIARY,
UNITED STATES HOUSE
OF REPRESENTATIVES,

Plaintiff,

v.

HARRIET MIERS, *et al.*,

Defendants.

Thomas E. Mann, Norman J. Ornstein, Mark J. Rozell and Mitchel A. Sollenberger, through undersigned counsel, respectfully request the Court's leave to participate as *amici curiae* in this case, for the reasons discussed below. Pursuant to Local Civil Rule 7(m), counsel for *amici* have conferred with counsel for the Plaintiff and for the Defendants. Plaintiff consents to this motion. Defendants indicate that they take no position as to this motion and reserve their right to oppose it at a later time.

Amici are recognized experts in the study of the Congress, the Presidency, and the interaction between the two. Thomas E. Mann is a Senior Fellow of Governance Studies at the Brookings Institution; Norman J. Ornstein is a Resident Scholar at the American Enterprise Institute for Public Policy Research. Mark J. Rozell is a Professor at the School of Public Policy at George Mason University, and Mitchel A. Sollenberger is a professor at the University of

Michigan - Dearborn. All *amici* have worked extensively on the roles that each branch of government plays in our system of government and the interaction between them. In their book, *The Broken Branch* (2006), Thomas E. Mann and Norman J. Ornstein document the recent weakening of Congress and the implications this has for the health of the nation. Mark J. Rozell and Mitchel A. Sollenberger recently authored an article entitled *Executive Privilege and the U.S. Attorneys Firings*, forthcoming in *Presidential Studies Quarterly*, examining the circumstances surrounding this very case.

ARGUMENT

When deciding a motion for leave to file a memorandum *amici curiae*, the court has “broad discretion to permit [a non-party’s] participation in th[e] suit as an *amicus curiae*.” *Nat’l Ass’n of Home Builders v. U.S. Army Corps. of Engineers*, 519 F. Supp. 2d 89, 93 (D.D.C. 2007) (citing *United States v. Microsoft Corp.*, 2002 WL 319366, at *2 (D.D.C. Feb.28, 2002)); *see also Tafas v. Dudas*, 511 F. Supp. 2d 652, 659 (E.D. Va. 2007) (“The Court has broad discretion in deciding whether to allow a non-party to participate as an *amicus curiae*.”). This court has granted leave to file when *amici* may assist the court in reaching its decision, *Nat’l Ass’n of Home Builders*, 519 F. Supp. 2d at 93, and when the *amici* have “a familiarity and knowledge of the issues raised therein that could aid in the resolution of th[e] case.” *Ellsworth Assocs. v. United States*, 917 F. Supp. 841, 846 (D.D.C. 1996).

Based on their expertise in the study of Congress, the Presidency and their interaction, *amici* meet the standards by which this Court has previously granted leave to file memoranda *amici curiae*. *Amici* are concerned that granting defendant’s motion to dismiss will sanction broad extensions of absolute executive immunity and that it will further weaken the vitality and

independence of the Congress in relation to the executive branch. Their expertise in these fields makes *amici* a valuable resource for the Court in considering these issues.

CONCLUSION

For all of the above reasons, *amici* respectfully request leave of the court to participate in this matter as *amici curiae*. A proposed order is submitted herewith.

Respectfully submitted,

/s/ Barry Coburn

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